

IN THE UNITED STATES ARMY  
FIRST JUDICIAL CIRCUIT

UNITED STATES )

v. )

MANNING, Bradley E., PFC )

U.S. Army, (b) (7)(C) )

Headquarters and Headquarters Company, U.S. )

Army Garrison, Joint Base Myer-Henderson Hall, )

Fort Myer, VA 22211 )

**DEFENSE MOTION TO  
MERGE AS UNREASONABLE  
MULTIPLICATION OF  
CHARGES FOR SENTENCING**

DATED: 30 July 2013

RELIEF SOUGHT

1. COMES NOW PFC Bradley E. Manning, by counsel, pursuant to *United States v. Campbell*, 71 M.J. 19 (C.A.A.F. 2012) and Rule for Courts Martial (R.C.M.) 1003(c)(1)(C), requests this Court find the below referenced specifications as an unreasonable multiplication of charges as applied to sentencing.

STANDARD

2. The military judge has the discretion to merge offenses “for sentencing purposes by considering the *Quiroz* factors and any other relevant factors that lead the military judge to conclude that the remedy of merger for sentencing is appropriate.” *Campbell*, 71 M.J. at 24, citing *United States v. Quiroz*, 55 M.J. 334 (C.A.A.F. 2001).

FACTS

3. PFC Manning has been found guilty of five specifications of violating a lawful general regulation, three specifications of conduct prejudicial to good order and discipline and service discrediting, six specifications of communicating classified information, five specifications of stealing or knowingly converting government property, and one specification of knowingly exceeding authorized access to a government computer, in violation of Articles 92 and 134 of the Uniform Code of Military Justice (U.C.M.J.) 10 U.S.C. §§ 892 and 934 (2010).

4. The Defense submits that the following four categories of specifications are an unreasonable multiplication of charges (UMC) as applied to sentencing:

Category 1: Article 134 (18 U.S.C. § 641) and Article 134 (18 U.S.C. § 793(e))

(A) Specifications 4 and 5 of Charge II involving the CIDNE-Iraq database containing more than 380,000 records belong to the United States government;

(B) Specifications 6 and 7 of Charge II involving the CIDNE-Afghanistan database containing more than 90,000 belonging to the United States government<sup>1</sup>;

(C) Specifications 8 and 9 of Charge II involving the United States Southern Command database containing more than 700 records belonging to the United States government;

Category 2: Article 134 (18 U.S.C. § 641) and Article 134 (18 U.S.C. § 1030(a)(1))

(A) Specifications 12 and 13 of Charge II involving the Department of State Net-Centric Diplomacy database containing more than 250,000 records belonging to the United States government;

Category 3: Article 134 (18 U.S.C. § 641 and 18 U.S.C. § 1030(a)(1)) and Article 92

(A) Specification 8 of Charge II involving the United States Southern Command database and Specification 2 of Charge III involving a violation of a lawful general regulation by adding unauthorized software to a Secret Internet Protocol Router Network computer;

(B) Specification 12 of Charge II involving the Department of State Net-Centric Diplomacy database and Specification 3 of Charge III involving a violation of a lawful general regulation by adding unauthorized software to a Secret Internet Protocol Router Network computer;

(C) Specification 16 of Charge II involving a portion of the United States Forces – Iraq Microsoft Outlook / Sharepoint Exchange Server Global Address List belonging to the United States government and Specification 4 of Charge III involving a violation of a lawful general regulation by using an information system in a manner other than its intended purpose.

DISCUSSION

5. The Court of Appeals for the Armed Forces (C.A.A.F.) in *United States v. Campbell*, 71 M.J. 19 (C.A.A.F. 2012) endorsed the following non-exclusive factors, commonly known as *Quiroz* factors, as a guide for military judges to consider when the defense objects to an UMC as applied to sentence:

- (1) Whether each charge and specification is aimed at distinctly separate criminal acts,
- (2) Whether the number of charges and specifications misrepresent or exaggerate the accused's criminality,

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<sup>1</sup> The Defense has filed a motion to merge Specifications 4 and 6 of Charge II and also to merge Specifications 5 and 7 of Charge II for Findings.

- (3) Whether the number of charges and specifications unreasonably increase the accused's punitive exposure, or
- (4) Whether there is any evidence of prosecutorial overreaching or abuse in the drafting of the charges.

6. This Court has previously held pursuant to *Campbell* that:

None of the factors are pre-requisites. One or more factors may be sufficient to establish an UMC based on prosecutorial over-reaching. A singular act may implicate multiple and significant criminal law interests, none necessarily dependent upon the other. UMC may apply differently to findings than to sentencing. A charging scheme may not implicate the *Quiroz* factors in the same way that sentencing exposure does. In such a case, the nature of the harm requires a remedy that focuses more appropriately on punishment than findings.

*See* Appellate Exhibit (AE) 78, *citing Campbell*, 71 M.J. 23, 24.

7. Using the *Quiroz* factors, this Court should find that the above listed specifications of Charge II and III constitute an unreasonable multiplication of charges for sentencing. The Defense will address each category below:

a) Category 1: The listed specifications (4, 5, 6, and 7) involve conduct that essentially arose out of the same transaction and were part of the same impulse. These specifications are not aimed at distinctly separate criminal acts for sentencing purposes. In this case, PFC Manning took the CINDE-I and CIDNE-A SIGACTs on the same day. The taking of the SIGACTs was a necessary step in order to then subsequently give those SIGACTs to Wikileaks. The Government conceded the transmissions in Specifications 5 and 7 were one transmission. *See* AE 78. Additionally, the number of specifications misrepresents PFC Manning's criminality. The Government's charging decision takes a single ongoing act of removing SIGACTs and giving them to Wikileaks, and divides this conduct into four separate specifications. The dividing of this single act into four specifications takes what should be a ten year offense and makes it a forty year offense. The number of specifications unfairly increases PFC Manning's punitive exposure. Likewise, Specifications 8 and 9 involve conduct that arose out of the same transaction and was part of the same impulse. In order to give the records from the United States Southern Command database, PFC Manning had to take the records out of the T-SCIF. By dividing this ongoing act into two separate specifications, the Government takes what should be a ten year offense and makes it a twenty year offense and unfairly increases PFC Manning's punitive exposure.

b) Category 2: Specifications 12 and 13 involve conduct that arose out of the same transaction and was part of the same impulse. These specifications are not aimed at distinctly separate criminal acts for sentencing purposes. The taking of the records from the Department of State Net-Centric Diplomacy database was a necessary step in giving these records to Wikileaks. By dividing this ongoing act into two separate specifications, the Government takes what should

be a ten year offense and makes it a twenty year offense and unfairly increases PFC Manning's punitive exposure.

c) Category 3: Specifications 8 of Charge II and 2 of Charge III; 12 of Charge II and 3 of Charge III; and 16 of Charge II and 4 of Charge III involve either the use of unauthorized software or of an information system in order to take records from the United States Southern Command database, Department of State Net-Centric Diplomacy database, and the United States Forces – Iraq Microsoft Outlook / Sharepoint Exchange Server global address list. PFC Manning used the unauthorized software of Wget in order to obtain the records charged in Specifications 8 and 12 of Charge II. He also used an information system in a manner other than its intended purpose to obtain the records in Specification 16 of Charge II. These specifications are not aimed at distinctly separate criminal acts for sentencing purposes.

8. This Court should determine that: Specifications 4, 5, 6, and 7 of Charge II constitute an unreasonable multiplication of charges as applied to sentencing; Specifications 8 and 9 of Charge II constitute an unreasonable multiplication of charges as applied to sentencing; Specifications 12 and 13 of Charge II constitute an unreasonable multiplication of charges as applied to sentencing; Specifications 8 of Charge II and 2 of Charge III; 12 of Charge II and 3 of Charge III; and 16 of Charge II and 4 of Charge III constitute an unreasonable multiplication of charges as applied to sentencing.

### CONCLUSION

9. For the reasons articulate above, this Court should determine the following:

a) that Specifications 4, 5, 6, and 7 of Charge II constitute an unreasonable multiplication of charges as applied to sentencing and accordingly merge them into one specification;

b) that Specifications 8 and 9 of Charge II constitute an unreasonable multiplication of charges as applied to sentencing and accordingly merge them into one specification;

c) that Specifications 12 and 13 of Charge II constitute an unreasonable multiplication of charges as applied to sentencing and accordingly merge them into one specification;

d) that Specifications 8 of Charge II and 2 of Charge III; 12 of Charge II and 3 of Charge III; and 16 of Charge II and 4 of Charge III constitute an unreasonable multiplication of charges as applied to sentencing and accordingly merge the Charge III specifications into the Charge II specifications.

10. The current maximum punishment based upon the findings of the court is to be reduced to the grade of E-1; to total forfeitures of pay and allowances; to be discharged with a dishonorable discharge; and to be confined for a period of 136 years. Under the Defense's above request, the maximum punishment would be to be reduced to the Grade of E-1; to total forfeitures of pay and allowances; to be discharged with a dishonorable discharge; and to be confined for a period of 80

years.

Respectfully submitted,



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